

Response Under 37 CFR § 1.116
Expedited Procedure - Examining Group 3116

REMARKS

Applicants have studied the Office Action dated March 14, 2005. It is submitted that the application is in condition for allowance. Claims 1-39 are pending. Reconsideration and allowance of the pending claims in view of the following remarks is respectfully requested.

In the Office Action, the Examiner:

- rejected the affidavit under 37 C.F.R. § 1.131 submitted by the Applicants on November 5, 2004;
- rejected claims 1-9, 11-31, and 33-39 under 35 U.S.C. §102(e) as being anticipated by Carroll, Jr. (U.S. Patent Application Number 2002/0085020); and
- rejected claims 10 and 32 under 35 U.S.C. §103(a) as being unpatentable over Carroll, Jr. (U.S. Patent Publication Number 2002/0085020) in view of Stapel et al. (U.S. Patent Publication Number 2002/0087571).

1.131 Affidavit

As noted above, the Examiner rejected claims 1-9, 11-31, and 33-39 under 35 U.S.C. §102(e) as being anticipated by Carroll, Jr. (U.S. Patent Application Number 2002/0085020) and rejected claims 10 and 32 under 35 U.S.C. §103(a) as being unpatentable over Carroll, Jr. (U.S. Patent Publication Number 2002/0085020) in view of Stapel et al. (U.S. Patent Publication Number 2002/0087571).

On November 5, 2004, the Applicants submitted an affidavit under 37 CFR 1.131 to overcome the Carroll reference. The Examiner rejected the submitted affidavit for "fail[ing] to sufficiently demonstrate conception or reduction to practice prior to the effective date of the Carroll reference."

Accordingly, the Applicants hereby submit a new affidavit under 37CFR § 1.131 stating and including evidence that the present invention was conceived and reduced to practice prior to the effective date of Carroll. Applicants submit that Carroll is now removed as a reference under 102 and 103.

**Response Under 37 CFR § 1.116
Expedited Procedure - Examining Group 3116**

Rejection under 35 U.S.C. §102(e) as anticipated by Carroll

As noted above, the Examiner rejected claims 1-9, 11-31, and 33-39 under 35 U.S.C. §102(e) as being anticipated by Carroll, Jr. (U.S. Patent Publication Number 2002/0085020). As noted above, the Applicants have submitted herewith a properly executed 1.131 Affidavit with relevant evidence herewith to remove the Carroll reference. Accordingly, the Applicants respectfully submit that the present invention distinguishes over Carroll for at least this reason and that the Examiner's rejection should be respectfully withdrawn.

Rejection under 35 U.S.C. §103(a) over Carroll and Stapel

As noted above, the Examiner rejected claims 10 and 32 under 35 U.S.C. §103(a) as being unpatentable over Carroll, Jr. (U.S. Patent Publication Number 2002/0085020) in view of Stapel et al. (U.S. Patent Publication Number 2002/0087571). As noted above the Applicants have submitted herewith a properly executed 1.131 Affidavit with relevant evidence herewith to remove the Carroll reference. Accordingly, the Applicants respectfully submit that the present invention distinguishes over Carroll taken alone and/or in view of Stapel for at least this reason and that the Examiner's rejection should be respectfully withdrawn.

CONCLUSION

The remaining cited references have been reviewed and are not believed to affect the patentability of the claims as amended. In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith in the disclosure of information known to be material to the examination of this application. In

**Response Under 37 CFR § 1.116
Expedited Procedure - Examining Group 3116**

accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment is limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: April 15, 2005

By: 

Jon Gibbons, Reg. No. 37,333
Attorney for Applicants

By: 

Scott Smiley, Reg. No. 55,627
Attorney for Applicants

FLEIT, KAIN, GIBBONS, GUTMAN BONGINI & BIANCO P.L.
551 N.W. 77th Street, Suite 111
Boca Raton, FL 33487
Tel (561) 989-9811
Fax (561) 989-9812

Please Direct All Future Correspondence to Customer Number 23334

POU920020205US1

4

09/748,716